

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

In re:	§	
	§.	Chapter 11
CIRCUIT CITY STORES, INC., et al.,	§.	
	§.	Case No 08-35653 (KRH)
Debtors.	§.	
	§	Jointly Administered

**RESPONSE AND REQUEST FOR HEARING TO LIQUIDATING TRUST'S FOURTH  
OMNIBUS OBJECTION TO LANDLORD CLAIMS (REDUCTION OF CERTAIN  
PARTIALLY INVALID CLAIMS, RECLASSIFICATION OF CERTAIN  
MISCLASSIFIED CLAIMS, DISALLOWANCE OF CERTAIN INVALID  
CLAIMS, DISALLOWANCE OF CERTAIN LATE FILED CLAIMS,  
AND DISALLOWANCE OF CERTAIN AMENDED CLAIMS)**

Capmark Finance, Inc ("Capmark") on behalf of Bank of America, National Association (Bank of America), by and through its counsel Bryan Cave LLP, hereby files this Response and Request for Hearing to Liquidating Trust's Fourth Omnibus Objection To Landlord Claims (Reduction of Certain Partially Invalid Claims, Reclassification of Certain Misclassified Claims, Disallowance of Certain Invalid Claims, Disallowance of Certain Late Filed Claims, and Disallowance of Certain Amended Claims) (the "Objection"), and states as follows:

1. The Trustee for Debtors has objected to proof of claim number 12152 (the "Claim") filed by Capmark as special servicer for Bank of America, National Association, as successor by merger to LaSalle Bank, National Association (f/k/a LaSalle National Bank), as Trustee (the "Trustee") for the Registered Holders of the Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 1997-C1.

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*Attorney for Capmark Finance Inc.*

2. With regard to proof of claim 12152 Trustee for Debtors states that:

“This claim was docketed and \$50,000 general unsecured and no amount was assigned to the part that was docketed as secured. The debtor does not believe that any unsecured amount is due this claimant.”

3. Rule 3001(f) of the Federal Rules of Bankruptcy Procedure provides that a “proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. Fed. R. Bankr P. 3001(f).

4. Trustee for Debtors fails to offer any evidentiary support for his assertions.

5. After a creditor has timely and properly filed a proof of claim, the Debtor must produce substantial evidence to rebut this prima facie evidence. See in re Hemingway Transp. Inc. 993 F.2d 915, 925 (1<sup>st</sup> Cir. 1993) (“The interposition of an objection does not deprive the proof of claim of presumptive validity unless the objection is supported by substantial evidence”); In re Harford Sands, Inc. 372 F.3d 637,640-41 (4<sup>th</sup> Cir. 2004) (Creditor's filing of proof of claim constitutes prima facie evidence of amount and validity of claim, and burden is on debtor to object to claim and to introduce evidence to rebut its presumptive validity); In re Gran, 964 F.2d 882, 827 (8<sup>th</sup> Cir. 1992) (“The objection party must then produce evidence rebutting the claimant or else the claimant will prevail.”)

6. In this case, the proof of claim 12152 was filed prior to the Bar Date and in accordance with the Federal Rules of Bankruptcy Procedure and provides sufficient documentary support for the Claims and the calculation of the Claims amounts. The Objection does not provide any evidence whatsoever to supports its objection to the calculation of the Claims amounts.

7. The Debtor bears the burden of proof for the disallowance of any portion of the Claims. See In re Woodmere Investors Ltd. Partnership, 178 B.R. 346, 354 (Bankr. S.D.N.Y

1995) Because Trustee for Debtors has produced no evidence whatsoever in support of the proposed reductions, he has failed to meet his burden of proof and Claim 12152 should be allowed in its entirety.

WHEREFORE, Capmark respectfully requests that the Court (a) overrule the Objection as it relates to the proof of claim 12152; (b) allow the claims as provided in Capmark's proof of claim; and (c) grant Capmark such other and further relief as this Court deems appropriate under the circumstances.

Dated: April 6, 2011

BRYAN CAVE LLP

By: /s/ Philip J. Meitl  
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*Attorney for Capmark Finance Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby states that on the 6th day of April, 2011, a true and correct copy of the above foregoing instrument was sent to:

Clerk of the Bankruptcy Court  
United States Bankruptcy Court  
701 East Broad Street-Room 4000  
Richmond, VA 23219

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